IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 45 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT
and
Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE COMPANY LIMITED .. APPELLANT

Versus

INDUBEN MULSHANKER RAVAL AND SEVERN ORS. .. RESPONDENTS

Appearance:
MR KF DALAL for Petitioner
MR PJ YAGNIK for Respondent No. 1
MR NALIN K THAKKER for Respondent No. 3
MS ATULA A MEHTA for Respondent No. 6
DELETED for Respondent No. 8

CORAM : MR.JUSTICE H.R.SHELAT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 21/03/2000

Oral Judgement (Per H.R.Shelat, J)

#. Being aggrieved by the judgment and award dated 2-3-1984 passed by the Motor Accident Claims Tribunal at Amreli, in Motor Accident Claim Petition No. 9 of 1983 on its file, directing the appellant and respondents Nos. 6 and 7 to pay Rs.1,13,000/- together with interest thereon @ 6% p.a. from the date of the petition till realisation, the appellant original opponent No.3 has preferred this appeal.

#. In order to appreciate the rival contentions necessary facts may in brief be stated. Mulshankar Rawal was serving as a Police Constable in Lathi Police Station. His total emoluments per month were Rs.720.80ps. On 8-8-82 at 8.00 a.m. Mulshankar Rawal was going to the Police Station riding over a bicycle for resumption of his duties. He was driving the cycle observing the traffic rules. A truck bearing No. GTG 2382 was coming from the opposite direction. The Respondent No.6 (orig. opponent No.1) was driving the said truck an at excessive speed. The truck was owned by the respondent No.7 (orig. opponent No.2). The respondent No.6 who was not careful in driving the truck hit Mulshankar Rawal and knocked him down injured. Mulshankar Rawal was taken to the hospital at Lathi, and later on to the Civil Hospital at Amreli for better treatment. After the preliminary treatment in the Civil Hospital at Amreli he was being shifted to the Civil Hospital at Ahmedabad but before he could reach Ahmedabad he succumbed to the injuries on the way. The respondents Nos. 1 to 5 (orig. applicants Nos. 1 to 5) are the heirs and legal representatives of deceased Mulshankar Rawal. They along with Shantaben Amlak Rawal joined as applicant No. 6 in the petition, but not the party to the present appeal, filed the Claim Petition being Motor Accident Claim Petition No. 9 of 1983 in Motor Accident Claims Tribunal at Amreli for the compensation of Rs.1,65,000/-.

#. On being served with the summons, the appellant and respondents Nos. 6 and 7 appeared before the Tribunal and filed their written statement at Exh. 12 and 13 denying the allegations levelled against them and also their liability to pay. The appellant also contended in the alternative that its liability in any case was upto the limit of Rs.50,000/- and no award fastening the liability of more than Rs.50,000/- should have been passed against it. The learned Chairman of the Tribunal

appreciating the evidence before him partly allowed the petition, and ordered the appellant as well as respondents Nos. 6 and 7 to pay Rs.1,13,000/- together with interest at the rate of 6% p.a. to respondents Nos. 1 to 5, jointly and severally. Being aggrieved by such award dated 2-3-1984, the appellant has preferred this appeal.

#. In order to assail the award passed, the appellant contends that in the written statement filed it had come out with a case in the alternative that its liability was limited to Rs.50,000/-, but the Tribunal overlooking the said plea as well as necessary terms and conditions of the Insurance Policy passed the award and made the appellant jointly and severally liable to pay whole of the amounts awarded. In the case on hand, the accident happened on 8-8-1982 and the amended provision of the Motor Vehicles Act raising the limits of liability from Rs.50,000/- to Rs. 1,50,000/- with effect from 1-10-1982 came into force; but the liability to be fixed was according to the provision of the M.V. Act in force on the date of accident. The Tribunal however erroneously preferred to apply the amended provision enhancing the liability which came into force from 1-10-1982.

#. Before we proceed to dissect the merits of the contentions raised, it may be stated that the respondents Nos. 1 to 5 have filed their cross-objections being Cross-Objections No. 258 of 1998 praying that the learned Chairman of the Tribunal ought to have passed the award to the fullest extent, as there was no reason to slice down the claim. They have therefore urged to award Rs.52,000/- disallowed by the Tribunal and pass the award for the whole of the amounts claimed.

#. As per Section 95 of the Motor Vehicles Act, 1939 which was applicable and in force at the time of accident provided the limits of the liability of the Insurance Company. Formerly under that provision the liability of the Insurance Company without any extra coverage of the risk was Rs.20000/-. But the same came to be enhanced to Rs.50,000/- from 2-3-1970. While from 1-10-1982 the limits of the liability of the Insurance Company came to be raised to Rs.1,50,000/-. Reading the copy of the judgment rendered by the Tribunal and the rival contentions advanced before us, the only point raised for our consideration is about the applicability of the provision. The Supreme Court in the case of Padma Srinivasan vs. Premier Ins.Co. Ltd. 1982(2) GLH 345 when such question was posed before it, has held that the governing factor for determining the

application of the appropriate law is not the date on which the policy of insurance came into force, but the date on which the cause of action accrued for enforcing the liability arising under the term of the policy. It is made clear that a cause of action will accrue for enforcing the liability when the accident occurs. It thus makes it clear that about the liability the provision prevailing or in force on the date of accident will be applicable because the course of action to enforce the liability can be said to have arisen on the date of accident and not on the day the contract of insurance is entered into.

#. In the case on hand the agreement regarding the insurance was entered into on 21-10-1981 for a period from the said date to 20-10-1982. On 8-8-1982 when the incident happened the old provision of Section 95 was in force. As per that old provision the liability of the Insurance Company was limited upto Rs.50,000/-. The provision came to be amended and the liability came to be enhanced from Rs.50,000 to 1,50,000/- with effect from 1-10-1982 i.e. one month and 24 days after the incident happened. On the day of incident therefore the amended provision which came into force on 1-10-1982 was not in force but old provision of Section 95 was in force under which liability of the Insurance Company was limited to Rs.50,000/- only. In this case, therefore, the Insurance Company, i.e., the appellant ought to have been held liable to the extent of Rs.50,000/- together with interest thereon, and not to the extent of Rs.1,13,000/-for which the award is passed. The learned Chairman of the Tribunal in view of such facts fell into error in applying the amended provisions of Section 95 which came into force after the happening of the incident despite the law having been made clear by the Supreme Court in the aforesaid decision. The learned Chairman of the Tribunal has no doubt placed reliance on the said decision but he has construed the same in a different way, not at all can be termed acceptable, but erroneous. According to him, the law that was prevailing on the day when the cause of action arose will have the binding effect. Keeping the point when the cause of action can be said to have arisen in abeyance, he proceeded to apply the law which came into being after amendment on 1-10-1982. What can be deduced from such reasoning is that according to him the cause of action can be said to have arisen, when issuing the notice a demand was made and when the petition claiming compensation was filed. Such construction is not just and proper. As made clear above the causes of action to claim compensation arises on the day the accident occurs. The contention of the

appellant in view of the fact has to be accepted.

#. As in this case on the day of accident old provision of Section 95 was prevailing under which the Insurance Company (appellant) ought not to have been fastened with the liability of more than Rs.50,000/-. The Tribunal in this case, ought to have made it clear that the appellant Insurance Company was liable to the extent of Rs.50,000/- and interest thereon and not for the whole of the amount of Rs.1,13,000/- and interest thereon.

#. Pointing out the policy Exh. 26, it is the contention of Mr. N.K.Thakkar, learned advocate representing the respondents that the policy would cover the liability in excess of Rs.50,000/-. In support of his such contention, he draws our attention to the premium charged.

##. The contention is misconceived. Basic premium charged was to the tune of Rs.87/- and for driver's risk Rs.8/- were charged extra. In all premium of Rs.95/- was charged from the insurer, i.e., respondent No.7. There is nothing in the policy indicating that extra premium was charged for covering the higher risk. At this stage we may refer a decision of the Supreme Court rendered in National Insurance Co. Ltd., New Delhi v. Jugal Kishore and others AIR 1988 SC 719 wherein it is laid down that no doubt under Section 95 of the Motor Vehicles Act, 1939 the liability of the Insurer is limited, but it is open to the insurer to take the policy covering the higher risk and for that purpose specific agreement as well as payment of separate premium is necessary. It is pertinent to note that in the case on hand there is neither specific agreement nor separate premium is charged covering the higher risk. Rs.87/- are charged as basic premium covering act liability u/s. 95 and Rs.8/- are charged for the driver's risk. Nothing more is charged so as to cover higher risk. Mr. Thakkar, learned advocate also contending for Mr. P.J.Yagnik learned advocate representing other respondents (claimants) has failed to point out anything in the Insurance Policy indicating the coverage of higher risk and levy of extra premium so as to cover the higher risk. The contention in view of the fact gains no ground to stand up.

##. We will now switch over to the Cross-Objection filed by respondent Nos 1 to 5. It is contended by them that the Tribunal ought to have considered the future income for the purpose of assessing the dependency. On the day of accident the deceased was getting Rs.725.80ps p.m. by

way of his salary. Even if he was not promoted at all and remained in the very cadre he would have reached to the maximum of the cadre-pay. Consequently, contribution to the family would have been more than what he was contributing till the date of accident.

##. While assessing the dependency the Tribunal has to bear in mind the future income which is certain, and not speculative or contingent. The deceased was serving as Police Head Constable. On the date of accident he was aged 42 years. He would have retired after about 16 years. By the time he would have reached to the ceiling of his pay-scale. It may further be mentioned that uptill now the pay scales are revised twice. because of the last upward revision of the pay scales which was obviously before the date of retirement age of the deceased, we are informed that even a Peon is now getting more than Rs.2550/- p.m. The deceased would have also got the benefit of revision of pay scales and would have earned yearly increments. Considering such facts, the Tribunal ought to have assessed the monthly income of the deceased at Rs.1450/- for assessing dependency. Out of the said amount certain amounts, the deceased must have spent on himself. Considering the submissions before us as well as the amounts which were required in those days for personal expenses because of the then prevailing market value of the essential commodities the same can best be assessed at Rs. 550/-. If the same is deducted the monthly dependency comes to Rs.900/and yearly comes to Rs.10,800/-. As the deceased was aged 42 years and would have supported the family till his retirement, namely, for about sixteen years or so in this case 15 multiplier must be adopted. If the yearly dependency is multiplied by 15, the amounts awardable under the head of dependency comes to Rs.1,62,000/-. In those days conventional amounts of Rs.5000/- were being awarded under the head loss to the estate of the deceased. In all therefore the respondents Nos. 1 to 5 are entitled to Rs.1,67,000/-, in stead that the Tribunal has awarded Rs.1,13,000/-. The respondents Nos. 1 to 5 are therefore entitled to more amounts to the extent of Rs.54,000/-, but we cannot pass the award to that extent because in law the court cannot grant more than what is prayed for. In the case on hand the respondents Nos. 1 to 5 have prayed for the award of Rs.1,65,000/-. They are therefore entitled to Rs.52,000/- more than what they have already been awarded i.e. Rs.1,13,000/-. The Cross Objections in view of these facts deserve to be allowed.

##. For the aforesaid reasons, the appeal as well as Cross objections are required to be allowed. They are

allowed accordingly with no order as to costs. The award passed is modified. Instead of Rs.1,13,000/-, the appellant and respondents Nos. 6 and 7 shall pay Rs.1,65,000/- with interest at the rate of 6% per annum from the date of the application till realisation as per the division to the extent of liability is made. The appellant and respondents Nos. 6 and 7 shall jointly and severally pay to respondents Nos. 1 to 5 Rs.50,000/together with interest thereon at the rate of 6% p.a. from the date of the petition till payment and costs in proportion, less already paid, and further the opponents Nos. 6 and 7 shall also jointly and severally pay Rs.1,15,000/- together with interest thereon at the rate of 6% per annum from the date of the petition till realisation and also the costs in proportion less already paid to the respondents Nos. 1 to 5.

##. If the Insurance Company - appellant has deposited more amounts inclusive of costs and interest than its liability, the Tribunal shall pay the amounts paid in excess back to the Insurance Company, if not disbursed, and if disbursed, the respondents Nos. 1 to 5 shall pay to the appellant the amounts in excess they have received.

--------x--------

snd